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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/428,203	10/27/1999	CHRISTOPHER O. OKUNJI	003/172/SAP	4366

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08/18/2003

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EXAMINER

FLOOD, MICHELE C

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 08/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/428,203

Applicant(s)
Okunji et al.

Examiner
Michele Flood

Art Unit
1654



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 1, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 30-32, and 36-39 is/are pending in the application.
- 4a) Of the above, claim(s) 2-10 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 11, 12, 30, 31, and 36-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of the species *Napoleonaea imperialis* and the solvent methanol in Paper No. 20 is acknowledged. Acknowledgment is made that Applicant indicates claims 1, 11, 12, 30, 31, 36, 37, 38, and 39 are readable on the elected species. Because Applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

The claims have been examined, insofar, as they read on the elected invention.

Claim Objections

Applicant is advised that should claim 38 be found allowable, claim 39 will be objected to under 37 CFR 1.75 as being a substantial thereof. When two claims in an application are duplicates or else so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 11, 12, 30 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Ekpendu et al. (U).

Applicant claims a biologically active extract comprising an extract from at least one plant selected from the group consisting of *Aframomum aulocacarpus*, *Aframomum daneilli*, *Dracaena arborea*, *Europatorium odoratum*, *Glossocalyx brevipes* and *Napoleonaea imperialis*, wherein said extract is obtained using an organic solvent. Applicant further claims a biologically active extract according to claim 1, wherein said extract is from at least one of roots, stem bark, leaves, fruit or seeds from said plant. Applicant further claims a biologically active extract according to claim 1, wherein said solvent is selected from the group consisting of hexane, chloroform, ethyl acetate and methanol.

Ekpendu teaches a methanol extract of the root bark of *Napoleonaea imperialis*, as well as, hexane and ethyl acetate extracts thereof. Ekpendu does not expressly teach the methanol extract of the claim-designated plant material as a biologically active extract. However, the plant material, the source of the plant material, and the solvent used in the making of the extract of the

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plant material are one and the same as claimed by Applicant. Therefore, a biologically active extract of the methanolic extract of the root bark of *Napoleonaea imperialis* taught by Ekpendu is inherent to the referenced extract.

The reference anticipates the claimed subject matter.

Claims 1, 11, 12, 30, 31 and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Kapundu et al. (V).

Applicant's claimed invention of Claims 1, 11, 12, 30 and 31 was set forth above. Applicant further claims a biologically active extract according to claim 11, wherein said extract is from powdered seeds of *Napoleonaea imperialis*. Applicant further claims a biologically active extract according to claim 36, wherein said solvent is selected from the group consisting of hexane, chloroform, ethyl acetate and methanol. Applicant further claims a biologically active extract according to claim 36, wherein said solvent is methanol.

On page 615, Column 2, lines 11-12, Kapundu teaches a methanol extract from powdered seeds of *Napoleonaea imperialis*. Kapundu does not expressly teach the methanol extract of the claim-designated plant material as a biologically active extract. However, the plant material, the source of the plant material, and the solvent used in the making of the extract of the plant material are one and the same as claimed by Applicant. Therefore, a biologically active extract of the methanolic extract of powdered seeds of *Napoleonaea imperialis* taught by Kapundu is inherent to the referenced extract.

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The reference anticipates the claimed subject matter.

Although not rising to the level of uncertainty, the Office notes an apparent misspelling in Claim 36, line 2. Applicant should replace "*Napoleonae*" with *Napoleonaea*.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is (703) 308-9432. The examiner can normally be reached on Monday through Friday from 7:15 am to 3:45 pm. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196 or the Supervisory Patent Examiner, Brenda Brumback whose telephone number is (703) 306-3220.

MCF

August 18, 2003

Michele Flood
MICHELE FLOOD
PATENT EXAMINER